

**Motion to Vacate, Set Aside, or Correct a Sentence
By a Person in Federal Custody**

(Motion Under 28 U.S.C. § 2255)

Instructions

1. To use this form, you must be a person who is serving a sentence under a judgment against you in a federal court. You are asking for relief from the conviction or the sentence. This form is your motion for relief.
2. You must file the form in the United States district court that entered the judgment that you are challenging. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file the motion in the federal court that entered that judgment.
3. Make sure the form is typed or neatly written.
4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.
6. If you cannot pay for the costs of this motion (such as costs for an attorney or transcripts), you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out an *in forma pauperis* form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you.
7. In this motion, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different judge or division (either in the same district or in a different district), you must file a separate motion.
8. When you have completed the form, send the original and two copies to the Clerk of the United States District Court at this address:
☐ Camden: Mitchell H. Cohen U.S. Courthouse 4th & Cooper Streets Camden, NJ 08101
☐ Trenton: Clarkson S. Fisher Fed. Bldg. & U.S. Courthouse 402 East State St. Trenton, NJ 08608
☒ Newark: Martin Luther King Jr. Fed. Bldg. & U.S. Courthouse 50 Walnut St. Newark, NJ 07101
9. **CAUTION:** You must include in this motion all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this motion, you may be barred from presenting additional grounds at a later date.
10. **CAPITAL CASES:** If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IBRAHEEM ISLAM,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil Action No. 22-6525 (KSH)

MEMORANDUM & ORDER

2023 JAN 25 A 10:10
DISTRICT OF NEW JERSEY
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Pro se Petitioner Ibraheem Islam, a federal prisoner confined at Cumberland FCI, seeks to file a motion pursuant 28 U.S.C. § 2255. Local Civil Rule 81.2 provides:

Unless prepared by counsel, . . . motions under 28 U.S.C. §2255 shall be in writing (legibly handwritten in ink or typewritten), signed by the petitioner or movant, on forms supplied by the Clerk.

L.Civ.R. 81.2(a). Petitioner did not use the habeas form supplied by the Clerk for section 2255 motions, *i.e.*, AO243 (modified): DNJ-Habeas-004 (Rev. 01-2014), and the form used by Petitioner does not contain the required notice pursuant to *United States v. Miller*, 197 F.3d 644, 652 (3d Cir. 1999). At this time, The Court will provide the *Miller* notice to Petitioner.

Because federal law requires a District Court to dismiss a second or successive § 2255 motion, *see* 28 U.S.C. § 2255(h), 2244(a), a § 2255 movant must include on the face of his or her first § 2255 motion all available federal claims. *See* 28 U.S.C. § 2255 Rule 2(b)(1) (requiring the motion to vacate to “specify all the grounds for relief available to the moving party”). In accordance with *Miller*, you have two options at this time:

- a. Have your pending § 2255 Motion (ECF No. 1) considered as your all-inclusive § 2255 motion, or

b. Withdraw your pending § 2255 Motion and file an amended § 2255 motion, which includes all available federal claims, provided that the amended all-inclusive § 2255 motion is filed within 45 days of the date of the entry of this Order.

Once you elect an option, the Court will screen the motion or amended motion under the Rules Governing § 2255 Motions. If you do not respond to this Order in writing within 45 days of the date of the entry of this Order, this Court will consider your pending § 2255 Motion as your all-inclusive § 2255 motion.

IT IS, THEREFORE, on this 6th day of December 2022,

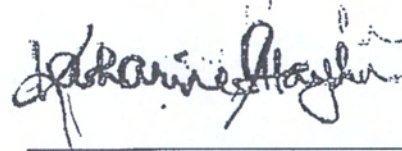
ORDERED that within 45 days of the date of this Order, Petitioner shall elect one of the following options: 1) have your pending § 2255 Motion (ECF No. 1) considered as your all-inclusive § 2255 motion, or 2) submit an amended § 2255 motion, which includes all available federal claims; and it is further

ORDERED that the Clerk of the Court shall forward Petitioner a blank section 2255 form— AO243 (modified): DNJ-Habeas-004 (Rev. 01-2014); and it is further

ORDERED that the Clerk's service of the blank section 2255 form shall not be construed as this Court's finding that the motion is or is not timely, or that Petitioner's claims are or are not procedurally defaulted; and it is further

ORDERED that this matter shall be screened for summary dismissal once Petitioner makes his election or the time to do so expires; and it is further

ORDERED that the Clerk of the Court shall serve a copy of this Memorandum & Order upon Petitioner by regular U.S. mail.

A handwritten signature in black ink, appearing to read "Katharine Hayden", written over a horizontal line.

KATHARINE S. HAYDEN
United States District Judge

Other Orders/Judgments

2:22-cv-06525-KSH ISLAM v. UNITED STATES OF AMERICA

HABEAS,PLO

U.S. District Court

District of New Jersey [LIVE]

CLERK
U.S. DISTRICT COURT
DISTRICT OF NEW JERSEY
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Notice of Electronic Filing

The following transaction was entered on 12/6/2022 at 4:44 PM EST and filed on 12/6/2022

Case Name: ISLAM v. UNITED STATES OF AMERICA

Case Number: 2:22-cv-06525-KSH

Filer:

Document Number: 2

Docket Text:

MEMORANDUM and ORDER advising Petitioner of rights under U.S. v. MILLER and directing petitioner to advise the Court in 45 days; directing the Clerk of the Court to forward to Petitioner a blank section 2255 Form. This matters hall be screened for summary dismissal once Petitioner makes his election or the time to do so expires. Signed by Judge Katharine S. Hayden on 12/6/2022. (dam)

2:22-cv-06525-KSH Notice has been electronically mailed to:

MOLLY SELZER LORBER molly.lorber@usdoj.gov, CaseView.ECF@usdoj.gov,
usanj.ecfcriminaldocketing@usdoj.gov

SAMANTHA CHRISTINE FASANELLO samantha.fasanello@usdoj.gov,
usanj.ecfcriminaldocketing@usdoj.gov

2:22-cv-06525-KSH Notice has been sent by regular U.S. Mail:

IBRAHEEM ISLAM
CUMBERLAND
FEDERAL CORRECTIONAL INSTITUTION
Inmate Mail/Parcels
P.O. BOX 1000
CUMBERLAND, MD 21501

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1046708974 [Date=12/6/2022] [FileNumber=16670295-0] [a742c590fb36efbf4608c4e9a9202a96677324bc8fd6a9be6ab86e1738408041d6dfae41118d793c8ad4cd1e35d7114dd439641f7564c17478372cd4521991a1]]

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

United States District Court		District	
Name (under which you were convicted): <i>Ibrahim Islam</i>		Docket or Case No.: <i>2:22-cv-06525-KSH</i>	
Place of Confinement: <i>FCI Cumberland</i>		Prisoner No.: <i>73577050</i>	
UNITED STATES OF AMERICA		Movant (include name under which you were convicted) <i>Ibrahim Islam</i>	
v.			

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

*Martin Luther King Bld. & O.S. Courthouse
50 Walnut St.
Newark, NJ 07101*

(b) Criminal docket or case number (if you know): *2:22cv-06525-KSH*

2. (a) Date of the judgment of conviction (if you know):

(b) Date of sentencing:

3. Length of sentence: *100-months*

4. Nature of crime (all counts):

*18 USC 922 (g) (2)
21 USC 841 (a) (1)
21 USC 841 (b) (1) (C)
18 USC 924 (c) (1) (A) (i)*

5. (a) What was your plea? (Check one)

(1) Not guilty ☐

(2) Guilty ☒

(3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

*18 USC 922 (g) (1) - guilty
21 USC 841 (a) (1) - guilty
21 USC 841 (b) (1) (C) - guilty
18 USC 924 (c) (1) (A) (i) - guilty*

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☐

Judge only ☐

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 U.S. DISTRICT COURT
 DISTRICT OF NEW JERSEY
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7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☐ No ☒
9. If you did appeal, answer the following:
- (a) Name of court:
 - (b) Docket or case number (if you know):
 - (c) Result:
 - (d) Date of result (if you know):
 - (e) Citation to the case (if you know):
 - (f) Grounds raised:

- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

- (1) Docket or case number (if you know):
- (2) Result:
- (3) Date of result (if you know):
- (4) Citation to the case (if you know):
- (5) Grounds raised:

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court:
- (2) Docket or case number (if you know):
- (3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

(7) Result:

(8) Date of result (if you know):

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

(7) Result:

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☒

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

I am claiming that my 922(g)(1) charged should be dismissed because no gun was ever found on my person, and evidence shows that it never was, nor used in a crime of violence - therefore it can be dismissed or used in comparison with the Taylor case - which states that crimes like so are not deemed violent. My lawyer failed to acknowledge this and was ineffective in reporting it.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

I did not know at the time of the direct appeal.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND TWO:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

I was charged with 21 USC 841 (a)(1) and (b)(2)(C) two counts of a similar offense. I believe they stacked these two charges on me for the drugs and fail to recognize they are of one and the same content. Therefore it should be dismissed. My lawyer also failed to see this issue, further showing ineffective.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

I was not yet aware of the issue

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

I was not made aware of the issue stated.

GROUND THREE:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

I am claiming further that I should not have been charged for a drug trafficking conspiracy, because there appeared to not only be no drugs in my possession, but a lack of proof or evidence showing any intent on my end of distributing drugs. My lawyer failed to point this issue out, and it was shown that my lawyer introduced past criminal activity of mine that would otherwise convince the judge.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

I was not yet made aware.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

hasty, I challenge the time sentenced. I was sentenced to too much time. More than expected. My lack of involvement in the so called Conspiracy is obvious, and I did not have any witnesses or informers identify me, yet my lawyer allowed the story to be presented as if I was involved in criminal activity. My attorney did not argue the sentence and assisted in my sentencing to an over-sentenced guilty plea.

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

I was not made aware of this issue.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: *I was not aware to the facts.*

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not

presenting them: *I have not presented any of the said facts, because I was locked inside a cell, without direct access to resources. But now I am able to research the information.*

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

Viggiano

(b) At arraignment and plea:

Viggiano

(c) At trial: *N/A*

(d) At sentencing:

Viggiano

(e) On appeal: *N/A*

(f) In any post-conviction proceeding:
Ugolino

(g) On appeal from any ruling against you in a post-conviction proceeding:
N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☒ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on (month, date, year).

Executed (signed) on 1-2-2023 (date).

IIQam
Signature of Movant

I declare (or certify, verify, or state) under penalty of perjury that I have been notified that I must include in this motion all the grounds for relief from the conviction or sentence that I challenge, and that I must state the facts that support each ground. I also understand that if I fail to set forth all the grounds in this motion, I may be barred from presenting additional grounds at a later date.

Executed (signed) on 1 (date)

Signature of Movant 1-2-2023 I. Islam

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

Ibraaheem Islam # 735 77050

Cumberland

Federal Correctional Institution

Po Box 1000

Cumberland, MD. 21501



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FEDERAL BUREAU OF INVESTIGATION
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Newark NJ 07101

Martin Luther King Jr. Fed Bldg

US Courthouse 50 Walnut St

United States District Court

CLERK

